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Customs Bulletin

Regulations, Rulings, Decisions, and Notices
concerning Customs and related matters



and Decisions

of the United States Court of Customs and
Patent Appeals and the United States
Customs Court

Vol. 10

DECEMBER 1, 1976

No. 48

purposes of section 1812, consideration would be given to relevant
submitted in opposition to the regulations
30 days from the date of publication of the regulations.
received in opposition to the regulations.

The name "TEN PRO" is hereby retained as the name of
Ten Pro Corporation, a corporation organized under the laws of the
State of Florida, at 26 Portland
books, P.O. Box 1000,
featured in the
CTME-2

This issue contains

T.D. 76-320 through 76-328

C.D. 4671 and 4672

Protest abstracts P76/245 through P76/255

Reap. abstract R76/120

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Regulations and Rulings

Published in the Federal Register November 17, 1976 (61 FR 50147)

DEPARTMENT OF THE TREASURY
U.S. Customs Service

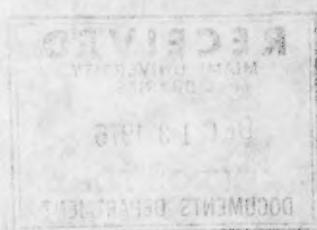
Customs Bulletin

Republished. Rules, Regulations, and Orders
concerning Customs and Tariff matters

and Decisions

NOTICE

The abstracts, rulings, and notices which are issued weekly by the U.S. Customs Service are subject to correction for typographical or other printing errors. Users may notify the U.S. Customs Service, Logistics Management Division, Washington, D.C. 20229, of any such errors in order that corrections may be made before the bound volumes are published.



For sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. Price 85 cents (single copy). Subscription price: \$43.70 a year; \$10.95 additional for foreign mailing.

(T.D. 76-321)

Countervailing duties—Vitamin K from Spain

Notice of Countervailing duties to be imposed under section 363, Tariff Act of 1930, as amended, by reason of the payment or bestowal of a bounty or grant upon the manufacture or production or importation of Vitamin K from Spain.

U.S. Customs Service

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
(T.D. 76-320) Washington, D.C.

Ten Pro

Notice of Recordation of Trade Name

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., November 11, 1976.

On September 28, 1976, there was published in the **FEDERAL REGISTER** (41 FR 42680) a notice of application for the recordation under section 42 of the Act of July 5, 1946, as amended (15 U.S.C. 1124), of the trade name **TEN PRO** used by Ten Pro Corporation. The notice advised that prior to final action on the application, filed pursuant to section 133.12, Customs Regulations (19 CFR 133.12), consideration would be given to relevant data, views, or arguments submitted in opposition to the recordation and received not later than 30 days from the date of publication of the notice. No responses were received in opposition to the application.

The name "**TEN PRO**" is hereby recorded as the trade name of Ten Pro Corporation, a corporation organized under the laws of the State of Pennsylvania, located at 26 Portland Road, W. Conshohocken, Pennsylvania 19428, when applied to sporting goods, manufactured in the United States.

(TMK-2-R:E:R) also stated that the information made available to that point was not sufficient to permit a thorough analysis of the programs. The notice further stated that further information would be made available to the public and that consideration would be given to relevant data, views or arguments submitted in writing.

LEONARD LEHMAN,
Assistant Commissioner,
Regulations and Rulings.

[Published in the **FEDERAL REGISTER** November 17, 1976 (41 FR 50747)]

While the information received during this countervailing proceeding has been limited in scope, it is sufficient to determine that the loan guarantee program, which could be considered, under certain circumstances, a bounty or grant within the meaning of the Act, does not apply to this particular case. Information received indicates that the facilities for the production of Vitamin K are not located in geographical areas

U.S. Customs Service

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ЧИСЛЕНТ ОНТ ЧО ТИМТНАЧД

И.В.Я.С.ИЛТ

Deutsche Universität Düsseldorf

(T.D. 76-321)

Countervailing duties—Vitamin K from Spain

Notice of Countervailing duties to be imposed under section 303, Tariff Act of 1930, as amended, by reason of the payment or bestowal of a bounty or grant upon the manufacture, production or exportation of Vitamin K from Spain

grants are paid or bestowed, directly or indirectly, within the meaning of section 303, Tariff Act of 1930, as amended, by reason of the manufacture, production or exportation of Vitamin K from Spain

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,

Washington, D.C.

receives a designation as a final rebate of 12 percent of the completed product of 1.5 percent.

TITLE 19—CUSTOMS DUTIES

CHAPTER 1—UNITED STATES CUSTOMS SERVICE
which is directly or indirectly applied to the final product or its components to be considered the rebate of an indirect bounty or grant.

PART 159—LIQUIDATION OF DUTIES

On May 13, 1976, a "Notice of Preliminary Countervailing Duty Determination" was published in the **FEDERAL REGISTER** (41 FR 19677). The notice stated that on the basis of an investigation conducted pursuant to section 159.47(c), Customs Regulations (19 CFR 159.47(c)), it was determined preliminarily that bounties or grants have been paid or bestowed, directly or indirectly, within the meaning of section 303, Tariff Act of 1930, as amended (19 U.S.C. 1303) (referred to in this notice as "the Act") on the manufacture, production or exportation of Vitamin K from Spain. The benefits preliminarily determined to constitute bounties or grants included the tax remission system known as Desgravacion Fiscal, and a loan guarantee program offering preferential interest rates on loans for plant expansion.

The notice stated that benefits derived from programs such as those which are the subject to this investigation can, in some circumstances, constitute bounties or grants within the meaning of the Act. The notice also stated that the information made available to that point was not sufficient to permit a thorough analysis of the programs. The notice further stated that before a final determination would be made consideration would be given to any relevant data, views or arguments submitted in writing within 30 days from the date of publication of the notice of preliminary determination.

While the information received during this comment period has been limited in scope, it is sufficient to determine that the loan guarantee program, which could be considered, under certain circumstances, a bounty or grant within the meaning of the Act, does not apply to this particular case. Information received indicates that the facilities for the production of Vitamin K are not located in geographical areas

(T.D. 26-321)

Comments on the new guitars—Tomasz Klimaszewski, Spain

Choices of Conservationist guides to be informed under section 303, Title A of the 1980 Environmental Quality Protection Act to ensure that a project to expand

TITLE 10—CUSTOMS DUTIES

CHAPTER 1—U.S. State Customs Services

The *Wet* Type of soil is the wettest soil type. It has the highest water content and the lowest infiltration capacity. It is usually found in depressions and along water courses. The *Wet* Type of soil is also called *Waterlogged* soil. It is characterized by its high water content, which causes it to become saturated with water. This saturation causes the soil to become very heavy and difficult to move. The *Wet* Type of soil is also called *Waterlogged* soil. It is characterized by its high water content, which causes it to become saturated with water. This saturation causes the soil to become very heavy and difficult to move.

This notice is published pursuant to section 303 of the Act, which have been recipient of such loans. Complete quantitative information on the tax remission system as it applies to Vitamin K remains unavailable.

Based on the information available regarding tax remissions under the desgravacion fiscal, it is hereby determined that bounties or grants are paid or bestowed, directly or indirectly, on exports of Vitamin K from Spain within the meaning of the Act. Vitamin K receives a desgravacion fiscal rebate of 12 percent on export. Included in the 12 percent rebate is a final stage tax on the completed product of 1.5 percent. The Treasury Department does not consider the rebate of an indirect tax which does not exceed the amount assessed and which is directly related to the final product or its components to be a bounty or grant. In keeping with this principle but in the absence of any additional information relating to the 12 percent desgravacion fiscal rebate, the bounty or grant would be 10.5 percent *ad valorem*.

Accordingly, notice is hereby given that Vitamin K imported directly or indirectly from Spain, if entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **FEDERAL REGISTER**, will be subject to payment of countervailing duties equal to the net amount of any bounty or grant determined or estimated to have been paid or bestowed.

In accordance with section 303, until further notice the net amount of such bounties or grants has been estimated and declared to be 10.5 percent *ad valorem*. Declaration of the net amount of the bounties or grants ascertained and determined, or estimated, to have been paid or bestowed, directly or indirectly, upon the manufacture, production, or exportation of Vitamin K from Spain will be published subsequently in the **FEDERAL REGISTER**.

Effective on or after the date of publication of this notice in the **FEDERAL REGISTER** and until further notice, upon the entry for consumption or withdrawal from warehouse for consumption of such dutiable Vitamin K, imported directly or indirectly from Spain which benefits from bounties or grants, there shall be collected, in addition to any other duties estimated or determined to be due, countervailing duties in the amount of 10.5 percent of the export price.

The table in section 159.47(f) of the Customs Regulations (19 CFR 159.47(f)) is amended by inserting in the column headed "Country", the name "Spain". The column headed "Commodity" is amended by inserting the words "Vitamin K". The column headed "Treasury Decision" is amended by inserting the number of this Treasury Decision, and the words "Bounty Declared-Rate" in the column headed "Action".

Amendment on the tax legislation as it applies to Altimin Australia and the proposed legislation.

It is only after proper estimation of the contribution of each factor that it is possible to arrive at the best configuration of the factors in the production process.

CUSTOMS

7

This notice is published pursuant to section 303 of the Act. (E.O. 14176)

(R.S. 251, Sections 303, as amended 624; 46 Stat. 687, 759, 88 Stat. 2050; 19 U.S.C. 66, 1303, as amended, 1624.)

(APP-4-05) ~~had~~ ~~exists~~ ~~plus~~ A

Sections 112.22 and 112.26, Customs Regulations, do (15702-17-14) 0701, *Commissioner of Customs*,
section 112.26, Customs Regulations, pertaining
to the *Commissioner of Customs*.

Approved November 10, 1976.

JERRY THOMAS. (80-87.D.T)

Under Secretary of the Treasury.

[Published in the FEDERAL REGISTER November 16, 1976 (41 FR 50419)]

Pentimento Sportswear

Notice of Recordation of Trade Name

DEPARTMENT OF THE TREASURY.

OFFICE OF THE COMMISSIONER OF CUSTOMS.

THE COMMISSIONER OF CUSTOMS,
Washington, D.C. November 12, 1976

Washington, D.C., 21 October 1913.

On October 5, 1976, there was published in the **FEDERAL REGISTER** (41 FR 43923) a notice of application for the recordation under section 42 of the Act of July 5, 1946, as amended (15 U.S.C. 1124), of the trade name **PENTIMENTO SPORTSWEAR** used by Pentimento Sportswear, Incorporated. The notice advised that prior to final action of the application, filed pursuant to section 133.12, Customs Regulations (19 CFR 133.12), consideration would be given to relevant data, views, or arguments submitted in opposition to the recordation and received not later than 30 days from the date of publication of the notice. No responses were received in opposition to the application.

The name "PENTIMENTO SPORTSWEAR" is hereby recorded as the trade name of Pentimento Sportswear, Incorporated, a corporation organized under the laws of the State of Washington, located at 767 South Industrial Way, Seattle, Washington 98108, when applied to women's sportswear: pants, shirts, and jackets, manufactured in Canada, Hong Kong, Korea, the Philippines, Taiwan, Argentina and the United States. S.G.A. Enterprises (Canada) of Vancouver, British Columbia and Britannia Sportswear, International Ltd. of Kowloon, Hong Kong, are authorized to use the trade name.

sentence to emphasize that the voluntary termination by a carman or lighterman of his bond will result in the concurrent termination of his 224-162-76-2 *a.* to facilitate the refinancing of railroad and

(TMK-2-R:E:R) *Acting Assistant Commissioner of Internal Revenue*
DONALD W. LEWIS, *E.R.*
Acting Assistant Commissioner,
Regulations and Rulings.

[Published in the FEDERAL REGISTER November 17, 1976 (41 FR 50747)]

(T.D. 76-323)

Brittania Sportswear

Notice of Recordation of Trade Name

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., November 12, 1976.

On October 5, 1976, there was published in the **FEDERAL REGISTER** (41 FR 43923) a notice of application for the recordation under section 42 of the Act of July 5, 1946, as amended (15 U.S.C. 1124), of the trade name **BRITTANIA SPORTSWEAR** used by Britannia Sportswear Company. The notice advised that prior to final action on the application, filed pursuant to section 133.12, Customs Regulations (19 CFR 133.12), consideration would be given to relevant data, views, or arguments submitted in opposition to the recordation and received not later than 30 days from the date of publication of the notice. No responses were received in opposition to the application.

The name "BRITTANIA SPORTSWEAR" is hereby recorded as the trade name of Britannia Sportswear Company, a corporation organized under the laws of the State of Washington, located at 2022 Boren Avenue, Seattle, Washington 98121, when applied to men's and women's clothing: pants, shirts and jackets, manufactured in Canada, Hong Kong, Korea, the Philippines, Taiwan, Argentina and the United States. S.G.A. Enterprises (Canada) of Vancouver, British Columbia and Britannia Sportswear, International Ltd. of Kowloon, Hong Kong, are authorized to use the trade name.

DONALD W. LEWIS,
Acting Assistant Commissioner,
Regulations and Rulings.

[Published in the FEDERAL REGISTER November 17, 1978 (41 FR 50747)]

Lightermen whose license (T.D. 76-324) was terminated because of the termination of their bonds, a new provision has been added to section 112.22. *Carriers, cartmen, and lightermen; Customs bonds—Customs Regulations amended*

Sections 112.22 and 112.26, Customs Regulations, pertaining to the issuance and duration of the license of a customhouse cartman or lighterman, amended; section 113.56, Customs Regulations, pertaining to the termination of the bond required as a condition of the customhouse cartage or lighterage license, added

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C.

TITLE 19—CUSTOMS DUTIES

CHAPTER I—UNITED STATES CUSTOMS SERVICE

PART 112 — CARRIERS, CARTMEN, AND LIGHTERMAN

PART 118 — CUSTOMS BONDS

On April 7, 1975, a notice of proposed rulemaking was published in the *FEDERAL REGISTER* (40 FR 15389) which proposed to amend section 112.26 of the Customs Regulations (19 CFR 112.26) pertaining to the duration of the license of a customhouse cartman or lighterman, and to add a new provision, section 113.56 (19 CFR 113.56), pertaining to the termination of the bond required as a condition of the customhouse cartage or lighterage license, the Bond of Customs Cartman or Lighterman, Customs Form 3855.

The purpose of the changes is to provide a procedure by which the Bond of Customs Cartman or Lighterman, Customs Form 3855, may be terminated and to provide for the notification of the cartman or lighterman when the termination is requested by the surety without the consent of the principal (the cartman or lighterman). The changes emphasize that the Bond of Customs Cartman or Lighterman, Customs Form 3855, is a requirement for maintaining a customhouse cartman's or lighterman's license.

Interested persons were given 30 days from the date of publication of the notice to submit relevant written data, views, or arguments regarding the proposal. After consideration of the comments received, section 113.56(b) has been revised (1) to permit the surety to set the termination date, and (2) to provide a specific procedure for notifying the principal and the district director of the intent of the surety to terminate. Section 113.56(a) has been modified by the addition of a sentence to emphasize that the voluntary termination by a cartman or lighterman of his bond will result in the concurrent termination of his license. In addition, to facilitate the relicensing of cartmen and

(ASCE-87-13,LT)

Curves, curves, and curves; Curves—Curves—Curves

Для этого Танк Т-34

Office of the Commissioner of Customs

Article 19—CUSTOMS DUTIES

Chapter 1—United States Customs Service

the following period. The mean age of the patients was 48 years (range 18-75 years). The mean age of the controls was 46 years (range 18-75 years). The mean age of the patients with a history of smoking was 50 years (range 18-75 years). The mean age of the patients without a history of smoking was 46 years (range 18-75 years). The mean age of the patients with a history of smoking was significantly higher than the mean age of the patients without a history of smoking ($p < 0.05$).

lightermen whose licenses were terminated because of the termination of their bonds, a new paragraph (c) has been added to section 112.22 to provide for the waiver by the district director in such cases of certain of the requirements that would otherwise apply to applicants for a license.

Accordingly, the proposed amendments, with the changes described above, are adopted as set forth below.

Effective date. These amendments shall become effective 30 days after publication in the **FEDERAL REGISTER**. (095401) ^{50, to read as}
follow (ADM-9-03)

G. R. DICKERSON,
Acting Commissioner of Customs.

Approved November 9, 1976,

JERRY THOMAS,

Under Secretary of the Treasury.

[Published in the **FEDERAL REGISTER** November 18, 1976 (41 FR 50821)]

PART 112 — CARRIERS, CARTMEN, AND LIGHTERMEN

Section 112.22 is amended by adding a new paragraph (c) to read as follows:

§ 112.22 Application for license.

(c) *Reapplication by certain terminated licensees.* Where the applicant for a customhouse cartage or lighterage license has previously been issued such a license and the license has been terminated pursuant to section 113.56 of this chapter, the district director may waive the filing of the items described in paragraphs (a)(2) and (a)(3) of this section, as well as the investigation described in section 112.23, provided the application is made within 30 days of the effective date of the termination of the previous license. Any requirements waived by the district director under this paragraph will be deemed to have been complied with for purposes of section 112.24(b).

Section 112.26 is amended to read as follows:

§ 112.26 Duration of license.

A license issued in accordance with this subpart shall remain in force and effect until the license is suspended or revoked pursuant to section 205, as amended, 1601, 1602, 1603, 1626, 1632, as amended, 1631, as amended, 1639, as amended (19 U.S.C. 60, 1551, 1565, 1623, 1624).

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(20-0-MGA)

MARK 105 - CARRIERS, CARRIERS, AND CARRIERS!

2125 Application for license

811536 - Division of Microbes

to section 112.30 or until the required bond is terminated pursuant to section 113.56 of this chapter.

(R.S. 251, as amended, secs. 551, 565, 624, 46 Stat. 742, as amended, 747, as amended, 759 (19 U.S.C. 66, 1551, 1565, 1624))

PART 113 - CUSTOMS BONDS

Part 113 is amended by amending the centerheading which appears before section 113.51 and by adding a new section 113.56, to read as follows:

~~This amendment is in the Customs Regulations after the 18th obsolete part which is in the 19th obsolete part.~~ SUBPART F - ASSESSMENT OF DAMAGES AND CANCELLATION OR

~~TERMINATION OF BOND~~

~~without entry to the United States or to the high officials of this Government * * * * * for special mission * abroad * claim * 8-54~~ § 113.56 Termination of Bond of Customs Cartman or

~~Lighterman.~~

(a) *Termination by cartman or lighterman.* A customhouse cartman or lighterman may terminate the Bond of Customs Cartman or Lighterman, Customs Form 3855, by filing with the district director by whose office the bond was approved a request for termination. The termination shall take effect on the date requested if the date is subsequent to the date of receipt of the request. If no termination date is requested or the termination date requested is prior to the date of receipt of the request, the termination shall take effect on the date of receipt of the request by the district director. If a new bond with good and sufficient sureties is not furnished by the cartman or lighterman prior to the effective date of the termination of the previous bond, the customhouse cartman's or lighterman's license will terminate concurrently with the bond.

(b) *Termination by surety.* A surety may, with or without the consent of the principal, terminate the Bond of Customs Cartman or Lighterman, Customs Form 3855, on which it is obligated. The surety shall provide reasonable notice to both the district director by whose office the bond was approved and the principal of his intent to terminate. Such notice shall contain the date on which termination shall be effective and shall be sent by certified mail, with a return receipt requested. If a new bond with good and sufficient sureties is not furnished by the cartman or lighterman prior to the effective date of the termination of the previous bond, the customhouse cartman's or lighterman's license will terminate concurrently with the bond.

(R.S. 251, as amended, secs. 551, 565, 623, 624, 46 Stat. 742, as amended, 747, as amended, 759, as amended (19 U.S.C. 66, 1551, 1565, 1623, 1624))

of section 113.30 or 113.31 before being placed in the ledger book.

PLATE 118 - CULTURE BONDS

Part 111 is the largest and deepest well in the series and has a total depth of 10,811 feet. The bottom of the well was reached on September 10, 1931, at 10,811 feet, and the well was completed on September 11, 1931.

CHAPTER 5 - ASSESSMENT OF DAMAGE AND CONTAMINATION OF TERMINATION OF BOND

§ 133-26. Submission of copy of certificate of title to the county recorder.

(T.D. 76-325)

Customs Clearance for High Government Officials

DEPARTMENT OF THE TREASURY,

Washington, D.C., November 15, 1976.

TITLE 19—CUSTOMS DUTIES

CHAPTER I—UNITED STATES CUSTOMS SERVICE

PART 148 — PERSONAL DECLARATIONS AND EXEMPTIONS

This amendment to the Customs Regulations abolishes an obsolete provision which extended the privilege of admission free of duty without entry to the baggage and effects of high officials of this Government returning from special missions abroad. Section 148.84 of the Customs Regulations (19 CFR 148.84) is amended to eliminate this obsolete practice and provide instead for expedited customs clearance of the baggage and effects of high officials of this Government returning from special missions abroad.

Section 148.84 of the Customs Regulations (19 CFR 148.84) is amended to read as follows:

§ 148.84 Baggage and effects of high Government officials.

Expedited customs clearance of their baggage and effects may be extended to high officials of this Government returning from special missions abroad, upon application therefor direct to the Department of the Treasury and the issuance of appropriate instructions.

(R.S. 251, as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1624)).

Since this amendment merely abolishes an obsolete practice which has no statutory basis, notice and public procedure thereon is found to be unnecessary, and good cause exists for dispensing with a delayed effective date under 5 U.S.C. 553.

Effective date: This amendment shall become effective December 1, 1976.

JERRY THOMAS,

Under Secretary of the Treasury.

[Published in the **FEDERAL REGISTER** November 19, 1976 (41 FR 50997)]

Printed by James Hahn and Co., Inc., Valley Stream, NY, at the Whitehouse, N.J. factory, with the use of imported cast lead, sheet lead and case lead overflow molds.

(T.D. 76-326)

Glass Beads from Canada

Receipt of notice from petitioner contesting countervailing duty determination

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C.

On September 2, 1976, a final countervailing duty determination, Treasury Decision 76-247, was published in the **FEDERAL REGISTER** (41 FR 37103) in the case of glass beads from Canada not over six millimeters in diameter produced by CanaspHERE Industries, Ltd. The determination stated that imports of such glass beads "benefit from the payments or bestowals of bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (19 U.S.C. 1303). These benefits include a grant from the Federal Department of Regional Economic Assistance and an interest-free loan from the Saskatchewan Economic Development Corporation". The determination went on to state that "[i]t has also been determined that other allegations, including allegations of below-cost or preferential freight rates, of the purchase of the facility from the City of Moose Jaw at a favorable price, and of the ability of CanaspHERE to secure lines of credit not otherwise available without Government assistance have not been sustained by that quantum of proof necessary to enable the Department of the Treasury to conclude that 'bounties or grants' have, as to those allegations, been paid or bestowed." The petition which led to this determination was filed with the Customs Service on August 25, 1975.

On September 29, 1976, notification was received by the Department that Potters Industries, Inc., an American manufacturer of glass beads, desires to contest the negative portion of the above-noted determination before the United States Customs Court.

In accordance with the provisions of section 516, Tariff Act of 1930, as amended by the Trade Act of 1974 (19 U.S.C. 1516), publication is hereby made of the fact that the necessary notice has been received that an American manufacturer desires to contest the determination that, as to certain allegations, a bounty or grant is not being bestowed, within the meaning of section 303, Tariff Act of 1939, as amended (19 U.S.C. 1303), on certain glass beads from Canada.

(APP-4-05)

LEONARD LEHMAN,

Acting Commissioner of Customs.

Approved November 15, 1976,

JERRY THOMAS,

Under Secretary of the Treasury.[Published in the **FEDERAL REGISTER** November 22, 1976 (41 FR 51490)]

(T.D. 76-327)

Synopses of drawback decisions

DEPARTMENT OF THE TREASURY,

OFFICE OF THE COMMISSIONER OF CUSTOMS,

Washington, D.C., November 18, 1976.

The following are synopses of drawback rates and amendments issued February 12, 1976, to September 21, 1976, inclusive, pursuant to sections 22.1 and 22.5, inclusive, Customs Regulations.

(DRA-1-09)

LEONARD LEHMAN,
Assistant Commissioner,
Regulations and Rulings.

(A) *Ammonium Persulfate FF (Stabilized), Potassium Persulfate FF (Stabilized), Sodium Perborate FF, Ammonium Persulfate RW Complex, Potassium Persulfate RHL Complex and Persulfate Blend.*—Manufactured under section 1313(a) by Roux Laboratories, Inc., Jacksonville, FL, with the use of imported ammonium persulfate, potassium persulfate and sodium perborate.

Rate effective on articles manufactured on and after April 19, 1976, and exported on and after May 1, 1976.

Rate issued by Regional Commissioner of Customs, Miami, FL, August 19, 1976.

(B) *Automatic trip lever bath wastes.*—Manufactured under section 1313(a) by Jonas Haies and Co., Inc., Valley Stream, NY, at its Middletown, NY, factory, with the use of imported cast brass shoe elbows and cast brass overflow elbows.

Rate effective on articles manufactured on and after July 12, 1976, and exported on and after August 4, 1976.

Rate issued by Regional Commissioner of Customs, New York, NY, September 2, 1976.

(C) *Calculators, electronic.*—Manufactured under section 1313(a) by Commodore Business Machines, Inc., Palo Alto, CA, with the use of imported jack plugs, plates, resistors, capacitors, convertors, transistors, pins, diodes, adaptors, keyboards, printed circuitboards, displays, casings (housing), and chips (MOS device or L.S.I.).

Rate effective on articles manufactured on or after May 9, 1972, and exported on or after May 9, 1975.

Rate issued by Regional Commissioner of Customs, San Francisco, CA, May 14, 1976.

(D) *Cameras.*—Manufactured under section 1313(a) by Schirmer-National Co., Bergenfield, NJ, at its Hauppauge, NY, factory, with the use of imported camera lenses.

Rate effective on articles manufactured on and after September 1, 1976, and exported on and after September 30, 1976.

Rate issued by Regional Commissioner of Customs, New York, NY, September 7, 1976.

(E) *Cartridges, loaded, ammunition.*—Manufactured under section 1313(a) by S&W Ammunition Co., Rock Creek, OH, with the use of imported ammunition cartridge cases.

Rate effective on articles manufactured on and after April 20, 1976, and exported on and after June 4, 1976.

Rate issued by Regional Commissioner of Customs, Boston, MA, September 21, 1976.

(F) *Chassis, school bus.*—Manufactured under section 1313(a) by Hendrickson Mfg. Co., Lyons, IL, with the use of imported diesel engines.

Rate effective on articles manufactured on and after May 1, 1976, and exported on and after July 1, 1976.

Rate issued by Regional Commissioner of Customs, Chicago, IL, August 17, 1976.

(G) *Chewing gum, sugarless.*—Manufactured under section 1313(a) by Wm. Wrigley Jr. Co., Chicago, IL, at its Chicago, IL; Santa Cruz, CA; and Flowery Branch, GA, factories, with the use of imported xylitol.

Rate effective on articles manufactured on and after January 21, 1976, and exported on and after February 19, 1976.

Rate issued by Regional Commissioner of Customs, Chicago, IL, August 24, 1976.

(H) *Dichlorobenzene mixture containing a minimum of 98% dichlorobenzene and trichlorobenzene streams.*—Manufactured under section 1313(a) by Solvent Chemical Co., New York, NY, at its Niagara Falls, NY, factory, with the use of imported chlorinated benzene streams.

Rate effective on articles manufactured on and after December 1, 1975, and exported on and after January 19, 1976.

Rate issued by Regional Commissioner of Customs, New York, NY, September 16, 1976.

(I) *Dyes.*—T.D. 71-201-F, covering dyes manufactured under section 1313(b) by E. I. du Pont de Nemours and Co., Inc., Wilmington, DE, at its Deepwater, NJ, factory, with the use of 1-amino-4-bromo-2-anthraquinone sulfonic acid, *amended to cover* (1) the foregoing articles manufactured under section 1313(a) with the use of imported 1-amino-4-bromo-2-anthraquinone sulfonic acid, and (2) additional dyes manufactured under section 1313(a) with the use of imported p-amino-acetanilide at an additional factory located at Manati, PR.

Amendment effective on articles manufactured on and after January 18, 1973, and exported on and after February 18, 1973.

Amendment issued by Regional Commissioner of Customs, Baltimore, MD, March 30, 1976.

(J) *Dyestuffs.*—T.D.'s 52633-D, 52937-D, 75-245-E, covering, among other things, sulphur blue and hydron (vat) blue dyestuffs manufactured under section 1313(a) by Martin Marietta Chemicals, Charlotte, NC, with the use of imported chemicals, *amended to cover* additional dyestuffs manufactured under section 1313(a) by the above company with the use of imported chemicals.

Amendment effective on articles manufactured and exported on and after February 1, 1970.

Amendment issued by Regional Commissioner of Customs, Miami, FL, July 22, 1976.

(K) *Fancase holding rings.*—T.D. 74-221-H, covering fancase holding rings for aircraft engines manufactured under section 1313(a) by the AIRCO Viking Div. of AIRCO, Inc., Montrale, NJ, at its Verdi, NV, factory, with the use of imported titanium sponge, *amended to cover* such products manufactured under section 1313(a) by Viking Metallurgical Corp., Verdi, NV, *successor*.

Amendment effective on articles exported on and after March 1, 1976, the date of succession.

Amendment issued by Regional Commissioner of Customs, San Francisco, CA, June 9, 1976.

(L) *Gear assemblies.*—Manufactured under section 1313(a) by Westinghouse Electric Corp., Sunnyvale, CA, with the use of imported gear forgings.

Rate effective on articles manufactured on or after August 28, 1975, and exported on or after February 25, 1976.

Rate issued by Regional Commissioner of Customs, San Francisco, CA, May 6, 1976.

(M) *Leather, pigment colored and surface textured.*—Manufactured under section 1313(a) by H. Goldstein Leather Manufacturing Co., Newark, NJ, with the use of imported hides.

Rate effective on articles manufactured on and after March 10, 1976, and exported on and after May 19, 1976.

Rate issued by Regional Commissioner of Customs, New York, NY, August 16, 1976.

(N) *Leather, pigment colored and surface textured.*—Manufactured under section 1313(a) by Pan American Tanning Corp., Gloversville, NY, with the use of imported leather hides.

Rate effective on articles manufactured or exported on and after June 23, 1975.

Rate issued by Regional Commissioner of Customs, New York, NY, August 20, 1976.

(O) *Machines, core drilling; and pumping stations.*—Manufactured under section 1313(a) by Acker Drill Co., Inc., Scranton, PA, at its Chinchilla, PA, factory, with the use of imported 1-cylinder and 2-cylinder Hatz diesel engines.

Rate effective on articles manufactured on and after May 2, 1975, and exported on and after May 7, 1975.

Rate issued by Regional Commissioner of Customs, Baltimore, MD, June 24, 1976.

(P) *Machines, earth drilling.*—Manufactured under section 1313(a) by Mobile Drilling Co., Inc., Indianapolis, IN, with the use of imported diesel engines.

Rate effective on articles manufactured and exported on and after June 1, 1976.

Rate issued by Regional Commissioner of Customs, Chicago, IL, September 1, 1976.

(Q) *Mill rolls and industrial slitting knives.*—Manufactured under section 1313(a) by SinterMet, Inc., Kittanning, PA, with the use of imported tungsten carbide powder.

Rate effective on articles manufactured and exported on and after August 15, 1976.

Rate issued by Regional Commissioner of Customs, Baltimore, MD, September 14, 1976.

(R) *Petroleum products.*—T.D. 71-74-P, covering petroleum products manufactured under section 1313(a) by Phillips Puerto Rico Core, Inc., Hato Rey, PR, at its Guayama, PR, factory, with the use of imported petroleum naphtha, *amended to cover special naphthas*—namely, paraffinic naphtha, butanes, pentanes, hexanes, LP-7 raffinate, and other such products manufactured under section 1313(a) by the above company with the use of imported petroleum naphtha.

Amendment effective on articles manufactured on and after January 1, 1968, and exported on and after January 30, 1968.

Amendment issued by Regional Commissioner of Customs, Miami, FL, July 22, 1976.

(S) *Pressure vessels and heat exchangers.*—Manufactured under section 1313(a) by Wiegmann & Rose Machine Works, Richmond, CA, with the use of imported heat exchange tubes.

Rate effective on articles manufactured on or after March 17, 1975, and exported on or after October 8, 1975.

Rate issued by Regional Commissioner of Customs, San Francisco, CA, May 25, 1976.

(T) *Pumps, diesel fuel injection.*—Manufactured under section 1313(a) by Robert Bosch Corp., Broadview, IL, at its Charleston Heights, SC, factory, with the use of imported detailed component parts, subassemblies, castings, and bar steel.

Rate effective on articles manufactured on and after May 27, 1976, and exported on and after June 1, 1976.

Rate issued by Regional Commissioner of Customs, Baltimore, MD, September 17, 1976.

(U) *Titanium and titanium alloy products.*—T.D. 71-74-X, covering titanium and titanium alloy products manufactured under

section 1313(b) by Titanium West, Inc., Reno, NV, with the use of titanium sponge, titanium briquets, titanium scrap and alloying metals, *amended* to cover the foregoing articles manufactured under section 1313(a) by the above-named company with the use of imported titanium sponge, titanium briquets, titanium scrap and alloying metals.

Amendment effective on articles manufactured and exported on and after August 23, 1969.

Amendment issued by Regional Commissioner of Customs, San Francisco, CA, February 12, 1976.

(V) *Trucks, lift; truck carriers; compacters; and rollers (road making equipment).*—T.D. 56384-S, as amended by T.D.'s 66-49-C and 66-126-D, covering lift trucks, truck carriers, compacters and rollers (road making equipment) manufactured under section 1313(a) by Hyster Co., Portland, OR, at its Portland, OR and Peoria, Danville, and Kewanee, IL, factories, with the use of imported diesel engines, *amended* to clarify the kinds of manufactured articles, i.e., lift trucks, truck carriers and compacters or rollers (road making equipment), a/k/a steel wheel rollers, self-propelled, vibratory soils compacters, vibratory asphalt compacters or pneumatic compacters manufactured under section 1313(a) by the above company at its various factories with the use of imported diesel engines.

Amendment effective on articles manufactured on and after January 15, 1973, and exported on and after March 17, 1973.

Amendment issued by Regional Commissioner of Customs, Chicago, IL, May 19, 1976.

(W) *Tunnel type marine thrusters.*—Manufactured by Bird-Johnson Co., Walpole, MA, with the use of imported bronze blades and shaft forgings.

Rate effective on articles manufactured on and after March 1, 1975, and exported on and after September 15, 1975.

Rate issued by Regional Commissioner of Customs, Boston, MA, September 1, 1976.

(X) *Vessels, supply, and offshore tugs.*—Manufactured under section 1313(g) by Zigler Shipyards, Div. of Lee-Vac, Ltd., Jennings, LA, with the use of main and auxiliary machinery, electronic equipment, electrical equipment, and miscellaneous equipment.

Rate effective on articles manufactured on and after May 6, 1975, and exported on and after May 13, 1975.

Manufacturer's statement of June 4, 1976, forwarded to Regional Commissioner of Customs, New Orleans, LA, August 27, 1976.

(Y) *Wearing apparel, finished leather.*—Manufactured under section 1313(a) by Highlander Sportswear, Inc., Newark, NJ, with the use of imported uncut and finished lambskins, suede leather, pig-skin leather, shearling (skins).

Rate effective on articles manufactured and exported on and after June 3, 1976.

Rate issued by Regional Commissioner of Customs, New York, NY, June 30, 1976.

(Z) *Wrist time computers, time computer test equipment, and other timing or timekeeping devices.*—Manufactured under section 1313(a) by Time Computer, Inc., subsidiary of HMW Industries, Inc., Lancaster, PA, with the use of imported cases, bracelets, filters, crystals, and electronic components.

Rate effective on articles manufactured on and after January 2, 1974, and exported on and after February 25, 1976.

Rate issued by Regional Commissioner of Customs, Baltimore, MD, June 10, 1976.

(T.D. 76-328)

Synopses of drawback decisions

DEPARTMENT OF THE TREASURY,

OFFICE OF THE COMMISSIONER OF CUSTOMS,

Washington, D.C., November 18, 1976.

The following are synopses of drawback rates and amendments issued June 2, 1976, to September 22, 1976, inclusive, pursuant to sections 22.1 and 22.5, inclusive, Customs Regulations.

In the synopses below are listed, for each drawback rate or amendment approved under section 1313(a) and (b), the name of the company, the specified articles on which drawback is authorized, the merchandise which will be used to manufacture or produce these articles, the factories where the work will be accomplished, the date the statement was signed, the basis for determining payment, the effective dates of exportation, the Regional Commissioner to whom the rate was forwarded, and the date on which it was forwarded.

(DRA-1-09)

LEONARD LEHMAN,
Assistant Commissioner,
Regulations and Rulings.

(A) Company: Homelite, a div. of Textron, Inc., Charlotte, NC
Section 1313(a) Articles: Chain saws and construction equipment
(including pumps, generators, concrete
vibrators, multi-purpose saws and spare
parts)

Section 1313(a) Merchandise: Component parts

Section 1313(b) Articles: Chain saws and construction equipment
(including pumps, generators, concrete
vibrators, multi-purpose saws and spare
parts)

Section 1313(b) Merchandise: Component parts

Factories: Gastonia, NC, and Greer, SC

Statement signed: June 15, 1976

Basis of claim: Appearing in

Effective date: November 3, 1975

Rate forwarded to RC of Customs: Baltimore, September 22, 1976

(B) Company: Tropical Int'l Enterprises, Inc., Hialeah, FL

Section 1313(a) Articles: Fabric and clothing

Section 1313(a) Merchandise: Yarn and fabric

Section 1313(b) Articles: Fabric and clothing

Section 1313(b) Merchandise: Yarn and fabric

Factory: Haileah, FL

Statement signed: March 18, 1976

Basis of claim: Used in

Effective date: August 2, 1973

Rate forwarded to RC of Customs: Miami, June 2, 1976

(C) Company: Georgia Pacific Corp., Portland, OR

Section 1313(a) Articles: Panels, plywood

Section 1313(a) Merchandise: Plywood veneers

Section 1313(b) Articles: Panels, plywood

Section 1313(b) Merchandise: Plywood veneers

Factory: Savannah, GA

Statement signed: July 26, 1976

Basis of claim: Appearing in

Effective date: March 1, 1976

Rate forwarded to RC of Customs: Miami, August 23, 1976

(D) Company: Sunstrand Corp.—Hydraulics Div., Rockford, IL
Section 1313(a) Articles: Pumps, fuel oil

Section 1313(a) Merchandise: Additional fuel oil pump parts

Section 1313(b) Articles: Pumps, fuel oil

Section 1313(b) Merchandise: Additional fuel oil pump parts

Factory: Rockford, IL

Statement signed: August 24, 1976

Basis of claim: Used in

Effective date: July 31, 1973

Rate forwarded to RC of Customs: Chicago, September 13, 1976

Amends: T.D. 74-300-N

(E) Company: Jones & Laughlin Steel Corp., Pittsburgh, PA

Section 1313(a) Articles: Steel plates, carbon; hot rolled coils and sheets; cold rolled coils and sheets; galvanized coils and sheets; tin plate coils and sheets, and tubular products

Section 1313(a) Merchandise: Carbon steel slabs

Section 1313(b) Articles: Same as foregoing under section 1313(a)

Section 1313(b) Merchandise: Carbon steel slabs

Factories: Cleveland, OH; Aliquippa and Pittsburgh, PA; and Hennepin, IL

Statement signed: June 30, 1976

Basis of claim: Appearing in

Effective date: May 3, 1976

Rate forwarded to RC's of Customs: New York and Baltimore, August 9, 1976

ERRATUM

In Customs Bulletin, Vol. 10, No. 43, dated October 27, 1976, in T.D. 76-288 on page 1 add last line in table to read:

(PB 9-10-68) D 9-9-76

Decisions of the United States Customs Court

United States Customs Court

One Federal Plaza
New York, N.Y. 10007

Chief Judge

Nils A. Boe

Judges

Paul P. Rao

James L. Watson

Morgan Ford

Herbert N. Maletz

Scovel Richardson

Bernard Newman

Frederick Landis

Edward D. Re

Senior Judges

Mary D. Alger

Samuel M. Rosenstein

Clerk

Joseph E. Lombardi

Customs Decisions

(C.D. 4671)

J. C. PENNEY PURCHASING CORPORATION v. UNITED STATES

Ladies wearing apparel

JACKET, SWEATER AND PANTS SETS—ENTIRETIES

Imported ladies wool knit and suede outfits consisting of jackets, shells (sweaters) and pants were classified as separate items, the jackets being classified under item 791.75 as wearing apparel of leather, while the woolen shells and pants were classified under item

382.58 as other women's wearing apparel, not ornamented, of wool, knit. The importer, alleging that the jacket, shell and pants were ladies pant suits, claimed that the articles were entireties properly classifiable under item 791.75 as wearing apparel in chief value of leather. The evidence showed that the importations were designed, purchased, imported and invoiced as a unit; that the three pieces were coordinated or matched as to color and matched as to size; that the merchandise was advertised to retail customers as a set and was so sold at retail; that the set was never broken up and the items sold separately; and that defective sets were disposed of by salvage or donated to a church or charity. *Held:* Based upon the facts presented, the imported sets were entireties for tariff purposes. See *Miniature Fashions, Inc. v. United States*, 54 CCPA 11, C.A.D. 894 (1966); *The Nissho American Corp. v. United States*, 64 Cust. Ct. 378, C.D. 4005 (1970); *A. N. Deringer, Inc. v. United States*, 71 Cust. Ct. 103, C.D. 4482 (1973); *W. T. Grant Co. v. United States*, 74 Cust. Ct. 3, C.D. 4579 (1975). However, plaintiff has only established its claimed classification with regard to one of the two types of the imported suits; it has failed to prove that the component material of chief value of the other type was leather. Therefore, the action is sustained only in part.

COMPONENT MATERIAL OF CHIEF VALUE

The proper method of determining the chief value of the importations is to ascertain the costs of the separate component materials at the time when they have reached the state when nothing further need be done to them except combine them into the completed article.

COMPONENT MATERIAL OF CHIEF VALUE

In computing the component material of chief value, labor performed on the individual component materials prior to combination into the completed article is considered as part of the component's value. Further, the costs of any processing done on component materials to permit their uniting with other materials in manufacturing an article are attributable to the material and must be considered in determining the component material of chief value. However, costs incurred in uniting the materials into the finished article are not considered in the chief value computation.

Court No. 74-3-00848

Port of San Francisco

[Judgment for plaintiff in part.]

(Decided November 2, 1976)

John B. Pellegrini for the plaintiff.

Rex E. Lee, Assistant Attorney General (Velta A. Melnbencis, trial attorney), for the defendant.

MALETZ, Judge: This case involves ladies wearing apparel invoiced as "Ladies knit suits" which consists of three components: a jacket, a shell (sweater) and a pair of pants. The importations, which were in two distinct styles, identified as style 200 and style 7205, were entered at the port of San Francisco in September 1973.

At liquidation, each of the three components was appraised and classified by the government as a separate article.¹ In this connection, all the jackets were classified under item 791.75 of the Tariff Schedules of the United States, as modified by T.D. 68-9, as wearing apparel of leather, not specially provided for, and assessed duty at the rate of 6 percent ad valorem. The shells and pants were classified under item 382.58, as modified by T.D. 68-9, as other women's wearing apparel, not ornamented, of wool, knit, and assessed duty at the rate of 37.5 cents per pound plus 20 percent ad valorem.

Plaintiff claims the three articles (jackets, shells and pants) forming style 200 "suits" as well as the three articles forming style 7205 "suits" are entireties in chief value of leather and therefore properly classifiable under item 791.75 as wearing apparel of leather dutiable at the rate of 6 percent ad valorem.

Against this background, two issues are presented. The first is whether the importations are entireties for tariff purposes. Second, if the articles are held to be entireties, the court must then determine the component material of chief value since the claimed provision, item 791.75, is a chief value provision.

The pertinent provisions of the Tariff Schedules of the United States are as follows:

GENERAL HEADNOTES AND RULES OF INTERPRETATION

9. Definitions. For the purposes of the schedules, unless the context otherwise requires—

(f) the terms "of", "wholly of", "almost wholly of", "in part of" and "containing", when used between the description of an article and a material (e.g., "furniture of wood", "woven fabrics, wholly of cotton", etc.), have the following meanings:

(i) "of" means that the article is wholly or in chief value of the named material;

¹ The question of the proper appraised values is not presently before the court since this issue has been severed. See *Pretrial Memorandum*, Oct. 9, 1975.

SCHEDULE 3. - TEXTILE FIBERS AND TEXTILE PRODUCTS

PART 6. - WEARING APPAREL AND ACCESSORIES

Subpart F. - Other Wearing Apparel

Subpart F headnote:

1. This subpart covers only wearing apparel, not specially provided for, of textile materials.

Other women's, girls', or infants' wearing apparel, not ornamented:

Of wool:

Knit:

Other:

Valued over \$5 per

pound:

382.58

Other----- 37.5¢ per lb.
+ 20% ad
val.

SCHEDULE 7. - SPECIFIED PRODUCTS; MISCELLANEOUS AND NON-ENUMERATED PRODUCTS

PART 13. - PRODUCTS NOT ELSEWHERE ENUMERATED

Subpart B. - Articles of Fur and of Leather

Subpart B headnote:

1. For the purposes of the tariff schedules (except part 5A of schedule 1)—

(a) the term "leather" includes "leather", as defined in headnote 1(a), part 5A, schedule 1, and also includes rawhide, parchment, and vellum.²

² Headnote 1(a), part 5A, schedule 1, reads:

1. For the purposes of this subpart—

(a) the term "leather" covers leathers made from hides and skins of all animals (including birds and fish); ***

Wearing apparel not specially provided
for, of leather:

791.75 Other ----- 6% ad val.

A representative sample of style 200 (plaintiff's exhibit 3) demonstrates that it consists of a lined rust-colored pigskin suede blazer jacket with contrasting beige-colored piping. The piping outlines the collar, the buttonholes, the tabs on the sleeves, and forms a "T" design on the patch pockets. The jacket also has a double row of decorative beige saddle stitching which extends around the perimeter, down the outer seam of the sleeves and around the two patch pockets and a breast pocket. The shell is a mock-turtle one made of ribbed wool, while the pants are cuffed and bell-bottomed and made of a flat wool knit weave. Both the shell and the pants are dyed to match the piping and stitching on the jacket.³

Style 7205 (plaintiff's exhibit 4) consists of a blue wool knit shirt-type jacket with matching blue lamb-suede. This lamb-suede used is to form: two front panels each of which has two flap pockets; a yoke in the back; a button-down wrist tab; and a buckle-belt. The shell and the pants are dyed to match the jacket and are of the same style as the shell and pants of style 200.⁴

At the trial plaintiff called four witnesses⁵ and offered eight exhibits in evidence. The defendant did not call any witness but offered eight exhibits in evidence.

The Entireties Question

With respect to the issue of entireties, the following facts appear: In June 1973, the plaintiff J. C. Penney Purchasing Corp. entered into two contracts with the Fortune Knitting Factory of Hong Kong (hereafter referred to as "Fortune"). The first contract provided for the sale of (1) 4,000 sets of style 200 suits, which were referred to as "Ladies' 3-pce. pig skin blazer woolen pants suit," at the unit price of \$38.00 per set and (2) 2,800 sets of style 7205 suits, which were referred to as "Ladies' 3-pce. suede trim jacket pants suit," at the unit price of \$28.00. The second contract provided for the sale of 1,000 sets of style 200, which were referred to as "Ladies' 3-pce. pig skin blazer woolen pants suit," at the unit price of \$39.00 per set. Both contracts provided for color and size distribution, quality controls, labelling, shipping and invoicing.

³ Style 200 also comes in a navy jacket with red trim, a red shell and red pants, and a brown jacket with matching camel-colored trim, shell and pants.

⁴ Style 7205 also comes in beige, loden green and rust.

⁵ Three of the four witnesses were employed by the J. C. Penney Company, Inc. as buyers, directors or advisers in the field of ladies fashion apparel.

The packing instructions in both contracts required "[e]ach set to be flat packed in heavy polybag and 24-30 sets in a seaworthy shipper." In accordance with these instructions, each of the imported three-piece "sets," consisting of a matching jacket, shell and pants, was shipped as a single unit in a heavy polybag envelope.

Both style 200 and style 7205 were designed by Penney's ladies suit buyer. The genesis of style 200 was a pigskin blazer jacket which was sold as a separate item of apparel at the Saks Fifth Avenue department store in New York City. The Penney buyer sent a sample of this blazer to its manufacturer, Fortune, with instructions to modify the design of the jacket by adding contrasting piping, saddle stitching and buttons, and to coordinate the trim on the jacket with a sleeveless turtleneck shell (sweater) and a pair of slacks all made to prescribed specifications. The colors on the shell and slacks were to be dyed to match the trim of the jacket thereby coordinating the unit as a three-piece suit.

The genesis of style 7205 was a two-piece wool knit pant suit with a suede front which was purchased by a Penney buyer at the Franklin Simon department store in New York City. The sample was sent to Fortune with instructions to produce the suit as a three-piece pant suit by adding a wool shell or sweater. The wool in the jacket, sweater and pants was to be dyed in the same lot and vat, while the suede was also to be dyed to match.

The Penney retail price for style 200 was \$89.00, while style 7205 retailed for \$65.00. Both three-piece styles had to be ordered and reordered as a unit by the individual Penney store. The component parts of these sets were never intermingled with any garments sold as separates or coordinates in the Penney stores. Furthermore the policy of the Penney company required that these garments be sold as units, that is a size 14 jacket had to be sold with a size 14 shell and pants. Thus, if a customer came in with a size problem—i.e., requiring a size 14 jacket or shell with a size 16 pants—the store was not allowed to break up the set to fit the customer. This policy—that the set must be sold as an entirety—was never violated.

In those instances when a Penney store had not sold its entire stock of the imported pant suits and there were leftovers, it reduced the price. If the suits did not sell at the reduced price, the store manager asked for permission from the Penney buyer to return the leftover suits to New York. If a set had a defect in the jacket, shell or pants, the normal practice was for the store to return the entire set to New York or to Penney's Buena Park warehouse in California. If the defect was minor, it was repaired and the set was sold as a unit in Penney's retail associate store in New York City. Otherwise, defective

returned sets were disposed of by salvage or donated to churches or charities.

The imported sets were advertised as suits. In the Penney stores, they were displayed on a circular rack or a T-stand and were offered for sale assembled on one hanger as a three-piece set and priced as a three-piece set.

The record indicates that a ladies suit, including a pant suit, is a garment designed as "a multi-piece woman's apparel sold as a unit with a common size"; it is a preconceived outfit which consists of two or three or more components of the same size which are always sold as a unit.

In contrast to suits, coordinates are separate items that can be mixed and matched and worn together. Coordinates are preconceived as to style and color and present a multiple of coordinated choices for the wearer. However, since coordinates are separates, each component can be purchased in a different size.

Unlike coordinates, the imports were already fully coordinated; in other words, in the case of the suits, the decision has been made for the consumer who needed only select her color and her size without going to the trouble of shopping around to find separate components to make a coordinated outfit.

The importations were purchased by the ladies suit buyer who was in charge of subdivision 265 at Penney. The buyer in this subdivision does not have the authority to buy these components as individual articles; rather, his jurisdiction is limited to buying and selling sets only.

It is to be added that sweaters and pants identical or substantially similar to those used in the imported sets could have been purchased as separates at other stores in the United States during the years 1973 through 1975.

With these facts in mind, we now consider whether the importations are entireties for tariff purposes. The question as to whether two or more components shipped together are to be considered an entirety for tariff purposes and thus assessed duty as one complete article is one that is "fraught with much difficulty." Sturm, *A Manual of Customs Law* (1974) p. 289. The extent of these difficulties was expressed in *Charles Garcia & Co., Inc. v. United States*, 45 CCPA 1, 2, C.A.D. 663 (1957) as follows:

Because of the different situations which are encountered involving the scope of individual tariff terms, meanings of particular words, evidences of legislative intent, and the existence of administrative practice and prior judicial decisions, analogies are not only difficult to find in the field of entireties,

but are of uncertain reliance in view of the variances which may be encountered in the factors mentioned.

In general, an article is regarded as an entirety when the joined components form a new article which possesses a character or use different from that of any of its parts, or when one of the elements of the component is predominant, the other parts being merely incidental to the predominant part. See *Sturm*, *id.* at 288.

Such rules notwithstanding, the determination of an entireties issue presents many problems as pointed out by the court in *Miniature Fashions, Inc. v. United States*, 54 CCPA 11, 15, C.A.D. 894 (1966):

The difficulty which is experienced in this type of case is not so much the formulation of a workable rule as it is the application of the provisions thereof to a given factual situation. Where it is apparent that the components of an importation have no useful function until joined into a single entity, it is, of course, relatively easy to say that the result constitutes an entirety. Where, however, the several components of a unit are to any extent alone susceptible to a separate use, the question of whether their individual identities are subordinated to the newly created entity is not so readily answered.

In determining whether an importation is an entirety the actual nature of the imported commercial entity must be the determining factor. As our appellate court noted in *Altman & Co. v. United States*, 13 Ct. Cust. Apps. 315, 318, T.D. 41232 (1925):

* * * [I]f an importer brings into the country, at the same time, certain parts, which are designed to form, when joined or attached together, a complete article of commerce, and when it is further shown that the importer intends to so use them, these parts will be considered for tariff purposes as entireties, even though they may be unattached or inclosed in separate packages, and even though said parts might have a commercial value and be salable separately. [Emphasis added.]

More specifically, so far as the present case is concerned, recent decisions have held that multiple components of wearing apparel were entireties for tariff purposes when certain guidelines or criteria were satisfied. Thus, in *Miniature Fashions, Inc. v. United States*, *supra*, 54 CCPA 11, the court held that certain cabana sets which consisted of shirts and shorts were entireties. In so holding the court noted the following: the sets were designed as a unit; they were matched as to color, print and fabric; they were imported as a unit; they were pinned together; they were invoiced as a unit; they were sold as a unit; the individual components of the set had no commercial value except as part of a unit; and individual components of the set were not resold as individual articles.

To similar effect is the decision in *The Nissho American Corp. v. United States*, 64 Cust. Ct. 378, C.D. 4005 (1970), *appeal dismissed*, 57 CCPA 141 (1970) which concerned the question as to whether boys flannel shirts and corduroy pants called shirt and longie sets were entireties. The court held that the shirts and pants were entireties stating (64 Cust. Ct. at 381-82):

The record thus establishes that the shirt and longie set herein was designed, purchased, imported, and invoiced as a unit. The two pieces were matched as to color, print and fabric. The merchandise was advertised to retail customers as a set and was so sold both at wholesale and at retail. It was never broken up and the items sold separately. If returned by a customer, it would be resold as a set or if defective, destroyed or given to charity. *While the shirt portion is a shirt and the trouser portion trousers and the ultimate consumer may use them separately with other trousers or slacks, it is clear that they were designed and merchandised as a set to be worn together.* [Emphasis added.]

Also, in *A. N. Deringer, Inc. v. United States*, 71 Cust. Ct. 103, C.D. 4482 (1973) the court found that certain "bra-kini" sets consisting of a brassiere and bikini pants were entireties. In reaching this conclusion, the court considered the following factors determinative: the articles were designed to be worn together; they were sold in sets; and they were displayed in sets. See also *W. T. Grant Co. v. United States*, 74 Cust. Ct. 3, C.D. 4579 (1975).

Turning now to the present case, an examination of plaintiff's exhibits 3 and 4 clearly reveals that the components of both of the imported pant suits are coordinated in a manner which creates a complete outfit. With respect to style 7205, plaintiff's exhibit 4, the three components of the suit are the same color, care having been taken to match the color of the leather and wool materials and each item incorporates a wool knit fabric. In style 200, plaintiff's exhibit 3, the color of the piping, trim, and buttons of the jacket, all of leather, match the color of the knitted shell and pant components. Again, special care was taken to ensure that the color match was as close as possible.

The purchase contracts covering the merchandise at issue clearly demonstrate that the suits were purchased by plaintiff as sets.

The official papers show that the imported suits were invoiced, packed and imported as sets. In fact the only reason the invoices listed separate values was to satisfy a request of the Customs Service. The testimony shows that the suits were packed as sets; this is corroborated by the representative polybags in which the subject pant suits were shipped as a unit as required by the sales contract.

As we have seen, style 200 was advertised as a set and both styles 200 and 7205 were sold at retail as sets. The suits were not broken up to accommodate a customer with a size problem and they were displayed in the retail stores as sets. The record also demonstrates that those of the imported suits which were not salable because of defects in one or more of their components were returned as sets and were not broken up and sold as separate articles.

The testimony shows further that the jacket in style 200 and the shells and pants in both pant sets could be worn individually or in combination with other articles and that articles of wearing apparel similar to the components of the subject suits are sold separately. This, however, does not preclude the imported articles from being classified as entireties. As the court made clear in the *Altman* case, *supra*, 13 Ct. Cust. Appl. at 318, an article may be an entirety "even though * * * [the] parts might have a commercial value and be salable separately." Likewise in *Nissho American*, *supra*, this court held that the sets therein involved were entireties even though the ultimate consumer may use components of the shirt and longie sets separately with other trousers or slacks (64 Cust. Ct. at 382) and "even though it is possible to wear the items separately." *Id.* at 383.

In summary, it is noted that the subject suits were designed, purchased, imported and invoiced as a unit. The three pieces were coordinated or matched as to color and matched as to size. The merchandise was advertised to retail customers as a set and was so sold at retail. It was never broken up and the items sold separately. If returned by a store, it would be resold as a set, or if defective, disposed of by salvage or donated to a church or charity. In light of the above, it must be concluded that the imported suits are entireties for tariff purposes.

The defendant has cited an exhaustive list of cases to establish its contention that the importations are not entireties; however, only one such case deals with wearing apparel. In that case, *United States v. Schoen & Co., Inc.*, 20 CCPA 370, T.D. 46133 (1933), certain embroidered blouses and certain silk skirts, which were matched in color but were not designed to form a complete article of commerce, were not used as such by the importer, were separately invoiced and were offered for sale separately, were held dutiable by the court under the separate provisions of law applicable to each article rather than as entireties.

The present case, however, is clearly distinguished from *Schoen* upon its facts since the imported jackets, shells and pants were designed, invoiced, and offered for sale as a unit or one complete

article of commerce thus putting it squarely in point with the previously cited *Miniature Fashions, Nissho American, A. N. Deringer and W. T. Grant* cases.

Defendant further contends that since the duty on wearing apparel of man-made fibers and wool is higher than the rate on wearing apparel made of other materials it would circumvent the intent of Congress to have the shells and slacks which are wool wearing apparel re-liquidated as wearing apparel of leather. In this case, however, we find the converse to be true since it was the intent of Congress to create a separate classification for leather wearing apparel. Thus a three-piece suit, meeting the criteria for an entirety, comprised of wool and leather, but in chief value of leather, must be classified as leather wearing apparel. Indeed, it would be inconsistent with the intent of Congress to classify it otherwise. See *Miniature Fashions, Inc. v. United States, supra*, 54 CCPA at 18.

In view of all these considerations, we find that the importations are entireties and turn our attention to the remaining issue of the component material of chief value.

Component Material of Chief Value

Inasmuch as General Headnotes and Rules of Interpretation, headnote 9(f)(i) states that the term "of" when used between the description of an article and a material means that the article is wholly or in chief value of the named material, it was plaintiff's burden, in order to establish its claim under item 791.75, to prove that the component material of chief value of the imported suits is leather. See *A. N. Deringer, Inc. v. United States*, 59 Cust. Ct. 148, C.D. 3101, 272 F. Supp. 987 (1967); *Broadway-Hale Stores, Inc. v. United States*, 63 Cust. Ct. 194, 198, C.D. 3896 (1969).

The proper method of determining the chief value of these importations is to ascertain the costs of the separate component materials at the time when they have reached the state when nothing further need be done to them except combine them into the completed article. *United States v. Jovita Perez*, 44 CCPA 35, 39, C.A.D. 633 (1957).

In computing the component material of chief value, labor performed on the individual component materials prior to combination into the completed article is considered as part of the component's value. *Pico Novelty Co., Inc. v. United States*, 62 Cust. Ct. 341, 344, C.D. 3759 (1969). Further, the costs of any processing done on component materials to permit their uniting with other materials in manufacturing an article are attributable to the material and must be considered in determining the component material of chief value. However, costs

incurred in uniting the materials into the finished article are not considered in the chief value computation. *Swiss Manufacturers Association, Inc. v. United States*, 39 Cust. Ct. 227, 233, C.D. 1933 (1957), *appeal dismissed*, 45 CCPA 129 (1958).

An examination of the samples makes it clear that leather and wool are the only possible components of chief value.⁶ In this setting, plaintiff presented the testimony of V. L. Chen, the manager and a partner of Fortune, the manufacturer of the importations, to establish that leather was the component material of chief value for the imported suits. Chen testified that he was personally familiar with the costs of the various materials for styles 200 and 7205 since he was responsible for purchasing the materials that went into their production. He also testified that he was personally familiar with the type and quantity of the materials used in their production and with the processing and processing costs of these materials. Further, Chen testified that under his supervision a cost breakdown for styles 200 and 7205 was prepared by the firm's accountant in 1974 from Fortune's manufacturing and purchasing records covering May and June 1973 when the materials for the importations were purchased.⁷ This cost breakdown is included in evidence as plaintiff's exhibit 7. Chen stated that he personally verified the data in plaintiff's exhibit 7 against the data in Fortune's books and records and that the records which formed the basis for this exhibit were prepared in the ordinary course of business.⁸

Style 200

With regard to the costing of style 200, the record demonstrates that the suede (leather) was purchased by Fortune from a Japanese firm at a cost of \$0.55 (U.S.) per square foot plus \$0.02 (U.S.) per square foot delivery and transportation charges.⁹ Fortune kept a

⁶ It is obvious that the other materials such as button blanks, rayon interlining, cotton thread and zippers would not be of such value as to be the component material of chief value.

⁷ The record shows that the prices for the materials in question did not vary in 1973.

⁸ Citing *4 Wigmore on Evidence* (3d ed. 1940) § 1230, pp. 434-35, defendant claims that actual documents recording the various costs should have been produced rather than testimony or a summary of their contents. It is noted, however, that with regard to voluminous documents, *4 Wigmore on Evidence* (Chadbourn rev. 1972) § 1230, pp. 535-41 indicates that the convenience of trials demands that summaries of complicated, burdensome or voluminous original records prepared by competent individuals be offered in evidence as the only practicable way of receiving such proof. The most commonly recognized application of the principle stated above is that by which business transactions are allowed to be shown by schedule or summary. See also *Henry A. Wess, Inc. v. United States*, 68 Cust. Ct. 201, 208, C.D. 4361 (1972) which held that statements as to costs by a businessman who directly supervises and controls the company records can be received into evidence without requiring substantiation of his statements through the submission of his official records.

⁹ The suede was valued in U.S. dollars since all Fortune's purchases from Japan were computed in U.S. dollars. For the sake of clarity (U.S.) appears after the numerals to denote U.S. dollars and (H.K.) appears after the numerals to denote Hong Kong dollars. In the period involved here—1973—a Hong Kong dollar was valued at \$0.20 per U.S. dollar.

running inventory on the suede used in these jackets and had some stock on hand before the order for style 200 was signed. Fortune bought the suede in lots of 100,000 or 500,000 square feet which were composed of skins having an average width of 6 to 8 feet. While the actual cost of the suede leather for an individual jacket depended on the size of the garment, an average of 29 square feet was used at a cost of \$16.53 (U.S.) per jacket.

In addition to the suede, there was a charge for "[l]eather for trimming" which covered the cost of the leather piping and the leather buttons. The leather used for piping and buttons was purchased in Hong Kong at a cost of \$1.68 (U.S.) per foot and was specially dyed to match the wool portions of style 200.

The manufacturing steps involved in completing the jacket included cutting and sewing the leather parts together, sewing the trim, sewing in the lining, contrast stitching, and pressing. The cutting charges included cutting the suede, the lining and the interlining. The interlining was neither wool nor leather. The sewing charges included the contrast stitching and sewing the piping when the garment was sewed together. The pressing charges represented two pressings; one before cutting and one when the garment was finished.

The shell portion of the suit was made of a flat hand-knit wool purchased from Japan at \$1.80 (U.S.) per shell. The knitting charges were \$1.20 (H.K.) per shell; loopwork charges, representing work done around the armhole of the shell, were \$0.70 (H.K.) per shell; an average mending charge of \$0.20 (H.K.) was included for every shell (even though not every shell required mending); there was a pressing charge of \$0.25 (H.K.) after knitting and a drycleaning charge of \$0.30 (H.K.) after the shell was completed.

The wool yarn used for the pants was also purchased by Fortune in Japan and came to \$5.40 (U.S.) per pair (including dyeing and delivery charges). The pants were made of a machine circular knit at a knitting charge of \$1.80 (H.K.) per pair. The cutting charges were \$0.25 (H.K.) representing the per piece charge for labor. An average mending charge of \$0.30 (H.K.) was entered as were pressing charges of \$0.60 (H.K.) for pressing the yarn after it was made into piece goods and pressing the pants after completion.

In Summary, Chen's testimony and plaintiff's exhibit 7 indicate the following breakdown of the U.S. dollar costs properly included in a chief value computation for style 200:

Leather	Wool
suede	shell: wool yarn ¹⁰
leather trimming	(includes
(including leather	dyeing)
on buttons)	knitting
suede cutting charges	charges
pressing charges	
(before cutting)	
	\$1.80
	.24
	\$2.04
total:	\$18.67
Pants:	Wool
	(includes
	dyeing)
	knitting
	charges
	pressing
	charges
	(when yarn
	made into
	piece goods)
	cutting
	charges
	.36
	.06
	.05
	\$5.87
total:	\$7.91

In computing the value of the leather, the cost of: the suede, the leather trimmings, the leather portion of the buttons, the pressing charges before cutting the suede, and the suede cutting charges were included. With regard to the cutting charges, plaintiff's exhibit 7 shows a figure of \$5.50 (H.K.), i.e., \$1.10 (U.S.). However, this charge

¹⁰ According to Chen, the wool yarn, as indicated in plaintiff's exhibit 7, cost \$3.60 (U.S.) per pound with $\frac{1}{2}$ pound of wool used for each shell and $1\frac{1}{2}$ pounds used for each pair of pants. Chen further testified that the undyed charge for this wool as purchased from Japan was about \$3.50 (U.S.) per pound and the dyeing charge was \$0.30 (H.K.) per pound. Defendant contends that these figures demonstrate a cost discrepancy and show that the dyed wool "in actuality cost \$3.80 rather than \$3.60 per lb." (Br. p. 69.) The difficulty with this contention is that the cost of the wool, i.e., \$3.50 per pound, was expressed by Chen in U.S. dollars, whereas the dyeing charge, i.e., \$0.30 per pound, was expressed by him in *Hong Kong* dollars. When it is considered (i) that the dyeing charge when translated into U.S. dollars was 6 cents per pound (since a Hong Kong dollar at that time equalled 20 cents (U.S.)); and (ii) that Chen approximated the charge for the undyed wool at "about \$3.50" per pound (R. 168), the cost of \$3.60 per pound (U.S.) as indicated by Chen is, under the circumstances, sufficiently close to the actual cost of \$3.56 (U.S.) as to be within reason.

includes the cutting not only of the suede but of the non-leather lining and interlining. Since the lining and interlining are neither leather nor wool, this entire charge cannot be attributed to the leather cost. In this circumstance, plaintiff has allocated one third of the total cutting cost, i.e., \$0.36 (U.S.) to the cost of cutting the suede. The allocation of processing costs among component materials is permissible in determining component material of chief value. *N. Erlanger Blumgart Co., Inc. v. United States*, 62 Cust. Ct. 110, 114, C.D. 3691, 295 F. Supp. 278 (1969), *aff'd* 57 CCPA 127, C.A.D. 991 (1970). And in the present case one third appears to be a reasonable allocation, particularly in view of Chen's testimony that cutting the lining and the interlining was cheaper than cutting the suede.¹¹

While the charges for pressing the suede before cutting are included in the cost of the leather, the charges for pressing after the jacket has been assembled do not figure in the chief value computation. Accordingly, one half of the pressing charges have been included in the computation for the value of the leather.

It is to be noted that the lining, interlining, and non-leather part of the buttons are not included in the chief value computation since they are neither wool nor leather. Similarly, the button sewing charges are not included since those charges are part of the final assembly process.

Nor are the sewing expenses incurred in completing the jacket, pants and shells includable in the chief value computation since they are expenses necessary to the assembly of the completed three-piece suit. See e.g., *United States v. Bernard, Judae & Co.*, 15 Ct. Cust. Appls. 172, T. D. 42231 (1927) where the cost of inserting bristles into the celluloid handles of brushes represented labor upon the brush and not upon a material, and the cost thereof was not permitted to be added to the bristles for the purpose of determining the component material of chief value. By the same token, the foregoing sewing expenses did not advance the value of the materials as materials and the charges therefor are not considered in determining

¹¹ With regard to the suede and wool portions of the imported sets, defendant argues that the evidence is conclusory because it is based on average amounts rather than a piece by piece breakdown. Defendant is apparently contending that a separate cost figure for each individual garment is necessary to establish chief value. However, in cases such as these, costing based upon averages is a reasonable way of determining what a manufacturer should charge for a garment, particularly when a major part of the garment is made from animal skins which by their very nature are irregular in size and quality and the average cost per garment is not based upon estimates or approximations, but on the actual expenses incurred by Fortune in the manufacture of the component parts of the merchandise before the court. See, e.g., *N. Erlanger Blumgart Co., Inc. v. United States, supra*, 62 Cust. Ct. 114; *Field & Co., v. United States*, 7 Ct. Cust. Appls. 332, 336-37, T.D. 36876 (1916); *True Fit Waterproof Co. v. United States*, 7 Ct. Cust. Appls. 489, 492-93, T.D. 37107 (1917).

the component material of chief value. In this connection, the distinction between costs attributable to component materials as opposed to those attributable to the article itself is clearly delineated in *Swiss Manufactures Association, Inc. v. United States, supra*, 39 Cust. Ct. at 233-34, as follows:

What must be kept in mind in the distinction between manufacturing operations which advance the materials *as materials* and manufacturing operations which convert the materials into the complete articles. The law is well settled that the costs entering into bringing the materials to the state where they are ready to be united with the other materials in the manufacture of the article are attributable to the *materials* and are to be considered in the determination of component material of chief value, but the costs entering into the uniting of the materials to make the finished article are not to be considered in the determination of component material of chief value. *Turner & Co. et al. v. United States*, 12 Ct. Cust. Appl. 48, T. D. 39997; *C. H. Powell Co. et al. v. United States*, 64 Treas. Dec. 467, T.D. 46711. [Emphasis in original.]

* * * * * the values of the single or separate component materials must be taken as of the time each one is ready to be united with the other materials in the manufacture of the article. * * *

In light of the foregoing, we find the value of the leather, including both material and processing costs, is \$18.67.

The shell and pants of style 200 are both of wool. The value of the wool includes the cost of the wool yarn, and the knitting charges. The sewing, looping, mending and drycleaning charges are not included, since those charges do not constitute processing of the wool material, but rather were for finishing the shell and/or pants, or were performed after the articles were complete.

The sewing work on the shell (which, as previously noted, is hand-knit) was performed to put in the zipper, while the sewing work on the pants was done to join the various knit piece goods which form the pants. The looping charges were incurred in finishing the armhole of the shell, while the mending and drycleaning charges were for work performed after the shell and pants had been completed. None of the charges for the foregoing work is includable in determining component material of chief value since the work involved did not advance the materials as materials.

The pressing charges for the pants represent two separate pressing operations, one which takes place after the wool yarn is made into piece goods, while the other is performed after the pants are com-

pleted. Since only the first pressing affects the wool as a material, it is reasonable to allocate one-half of the total pressing charge or \$0.06 (U.S.) for the pants in computing the value of the wool material.

The cutting charges for the pants are included in chief value since this is work performed on the material itself.

Neither the zipper material in the shell and pants nor the elastic waistband in the pants is made of wool or leather and hence is not considered.

In sum, the total value of the wool in the shell and pants—which value includes the material and processing costs—totals \$7.91. Since, as previously indicated, the total value of the leather is \$18.67, the necessary conclusion is that style 200 is in chief value of leather, as claimed by plaintiff.

Style 7205

The testimony of the witness Chen as to style 7205 indicated that each jacket required 12 square feet of lamb-suede when averaged out over a large number of garments and that the cost of the suede was \$0.75 (U.S.) per square foot (which included a freight charge of \$0.05 (U.S.)) or a total cost per jacket of \$9.00 (U.S.). The suede was purchased in the United States where it was bought by the skin, the average width of which was between 4 to 6 feet. According to Chen, although the two panels on the front of the jacket are only 6 inches wide, they cannot be cut out of one width of lambskin despite the fact that the lambskin can be cut lengthwise or crosswise. Chen testified that the cutting charge for the suede in the jacket was \$3.50 (H.K.) or \$0.70 (U.S.). The interlining on the jacket was either cotton or polyester, while the knitting was of a circular machine type which cost \$0.58 (H.K.) per pound. Chen further testified that sewing charges of \$1.50 (U.S.) were incurred for: sewing the suede to make the panels; sewing buttonholes; and sewing the jacket together. As in the case of style 200, he stated that there were two separate pressings, the first before cutting, the second after the jacket was finished.

With regard to style 7205, plaintiff contends that Mr. Chen's testimony and plaintiff's exhibit 7 indicate the following breakdown of those U.S. dollar costs which are properly considered in a chief value analysis of that style:

Leather		Wool	
Sheep-suede material	\$9.00	Jacket: wool yarn	\$1.80
cutting charge for suede parts	.70	cutting charges	.04
pressing charges	.06	knitting charges	.12
charge for sewing suede parts together	.60	pressing charges	.02
			—
total:	\$10.36	total:	\$1.98
		Shell: (same as style 200)	2.04
		Pants: (same as style 200)	5.87
			—
		total:	\$9.89

Chen testified that the value of the leather in the jacket component of style 7205 includes the value of the lambsuede, the charges for cutting the suede and pressing it prior to cutting, and the charges for sewing the suede pieces together to make panels which were joined with the wool to produce the jacket. The figures he presented show that Fortune allocated the various processing and finishing costs incurred in producing the jacket between leather and wool on an 80-20 percent basis, with 80 percent for leather and 20 percent for wool.

Plaintiff contends that since the sewing charges for the jacket include sewing the jacket together as well as sewing the suede pieces together to make the panels, an allocation of the charges of sewing the suede must be made. Citing *Swiss Manufactures Association, Inc. v. United States, supra*, 39 Cust. Ct. at 234, plaintiff states that the joining of the leather pieces together is properly part of the value of the leather component material since until the panels are created, the leather is not ready to be united with the wool to form the jacket. With regard to the balance of the sewing charges for sewing the jacket together (i.e., sewing the leather panels and wool pieces together), plaintiff claims these are clearly assembly charges and, therefore, not part of the chief value computation. On this aspect plaintiff further contends that the sewing charges should be allocated on the basis of 80 percent to the leather part of the jacket and 20 percent to the woollen part. It then asserts that if this 80 percent is further allocated between (1) the sewing necessary to make the suede panels and (2) the sewing of the leather panels and wool pieces together, 40 percent or \$0.60

(U.S.) of the total jacket sewing charge of \$1.50 (U.S.) is attributable to preparing the suede panels.¹²

It is in these contentions that plaintiff has failed in its attempt to prove that the component material of chief value in style 7205 was leather. For while it is clear

* * * that the value of the materials should be determined as of the time when they had reached such a condition that nothing remained to be done upon them by the manufacturer except putting them together, there still remains open in each case that may arise the determination of the question as to whether or not that stage has or has not been reached, and this is the precise issue here. [*United States v. Meadows*, 2 Ct. Cust. Appl. 143, 146, T.D. 31665 (1911).]

With this consideration in mind, plaintiff claims the suede panels are not ready to be united with the wool to form the jacket until such time as the suede pieces are sewn together. In this circumstance, the \$0.60 (U.S.) sewing charge which plaintiff would add to the value of the suede leather for sewing such pieces together is of major importance in determining the component material of chief value for without this charge the total cost of the leather would be \$9.76 rather than plaintiff's claimed value of \$10.36 and thus the wool which is valued by plaintiff at \$9.89 would be the component material of chief value.

There is some difficulty in determining when materials have reached a condition where nothing remains to be done by the manufacturer except putting them together. Here we are concerned with three-piece pant suits composed of a jacket, a shell, and a pair of slacks. In computing the component values of style 200 the component materials were considered by plaintiff to be ready to be united to form the three-piece unit when the woolen and leather portions were fully processed and cut and were ready to be sewn or assembled into the respective jacker, slacks and shell which comprised the three-piece suit. Thus, in the case of style 200 there were no sewing charges included for the leather jacket such as charges for sewing the pieces of suede together to make the pockets, the leather collar and the leather tabs. Similarly, there were no sewing charges for sewing the woolen portions of the style 200 outfit together, such as joining the various knit piece goods which formed the slacks and the shell.¹³

In the case of style 7205, however, plaintiff adopts a different approach. Thus, in contrast to style 200, it includes the charge of \$0.60 (U.S.) for sewing the suede pieces together but totally ignores the

¹² There is no indication or explanation as to how plaintiff arrived at this 40 percent figure nor is there any evidence in the record to support it.

¹³ Had these sewing charges been included for both the leather and woolen portions of style 200, the record indicates that the value of the leather vis-a-vis the value of wool would have been even larger than that actually claimed.

charges for sewing the woolen pieces together, such as sewing together the various pieces of wool to make the collar, the front and back of the jacket, and the sleeves. Had plaintiff made a computation for style 7205 consistent with its style 200 computation, it would *not* have included the amount of \$0.60 for sewing the suede pieces together—this on the basis that it considered the component materials for style 200 as fully processed and cut when they were ready to be united to form the woolen and leather portions. However, if the \$0.60 charge is properly includable in determining the value of the leather in style 7205 then it was incumbent upon plaintiff also to include the charges for sewing together the *wool* pieces of that suit so that a proper comparison could be made between the total value of the leather and the wool portions of the suit. In other words, by including in style 7205 the sewing charges for the suede pieces, while at the same time ignoring the sewing charges for the *woolen* pieces, plaintiff would have it both ways. And this the court cannot permit.

In sum, we must conclude that the \$0.60 sewing charge is not part of the value of the leather material of style 7205. We therefore hold that the value of the leather material for style 7205 is \$9.76 (\$10.36 less \$0.60) while the value for the woolen material is \$9.89. Accordingly, the component material of chief style 7205 as an entirety is wool.

In view of the foregoing, plaintiff's claim with regard to style 200 is sustained, but with regard to style 7205 is overruled. Judgment will be entered accordingly.

(C.D. 4672)

IMPERIAL PRODUCTS, INC. v. UNITED STATES

Cloth brush heads

Court No. 72-11-02357

Port of Minneapolis

[Judgment for plaintiff.]

(Decided November 5, 1976)

Stein and Shostak (Marjorie M. Shostak of counsel) for the plaintiff.

Rex E. Lee, Assistant Attorney General (Robert B. Silverman, trial attorney), for the defendant.

FORD, Judge: Pursuant to rule 8.2 of the rules of the court, plaintiff has moved for summary judgment. Defendant has filed

opposition thereto on the ground that the following issues of fact are subject to trial:

- (1) Was such or similar merchandise freely sold to other purchasers?
- (2) Did the price at which such or similar merchandise was freely sold to other purchasers include the royalty fee incurred by plaintiff herein?
- (3) Did the price at which such or similar merchandise was freely sold to other purchasers include the contractual obligations incurred by plaintiff herein with regard to minimum quantity of purchase and computation of royalty fee payments?

(4) Did the purchase price plaintiff paid for the subject merchandise include the amount paid for royalty fee or was the royalty fee paid for a separate right to manufacture the Miracle Brush?

(5) Did the plaintiff's exclusive right to manufacture and sell the Miracle Brush increase the value of the components, one of which was the imported brush heads?

The merchandise covered by this action consists of cloth brush heads for Miracle Brushes and Mini Miracle Brushes which were appraised on the basis of export value as defined in section 402(b) of the Tariff Act of 1930, as amended by the Customs Simplification Act of 1956, 19 U.S.C. 1401a(b), at the invoice value of 12 cents per unit, f.o.b. port, plus 6 cents per unit royalty fees, net packed. The above facts are agreed upon by the parties. In addition the parties agree the appraisement is separable. Therefore, the issues of fact which defendant contends exist, all relating to the elements of appraisement, are for the reasons which will be set forth *infra* not issues of material fact subject to trial.

The question of separable appraisements and the necessary proof in such matters have been the subject of extensive litigation. In *United States v. H. M. Young Associates, Inc.*, 62 CCPA 20, C.A.D. 1138, 505 F.2d 713 (1974), the court reviewed the doctrine of separability and its background making the following statements:

As we said in *Pan American* [57 CCPA 134, C.A.D. 993, 428 F.2d 848 (1970)], the phrases "separable appraisement" and "separability rule" were succinctly explained in *United States v. Supreme Merchandise Co.*, 48 Cust. Ct. 714, A.R.D. 145 (1962), as follows:

If ex-factory prices and other charges are separately stated on the invoices and the appraiser's finding of value is expressed in terms of the invoice unit prices, plus the questioned charges, the appraisement is deemed to be separable. *United States v. Dan Brechner et al.*, 38 Cust. Ct. 719, A.R.D. 71 (1957); *United States v. Gitkin Co.*, * * *; *Valley Knitting Co., Inc., et al. v. United States*, 44 Cust. Ct. 599, Reap.

Dec. 9627 (1960). Under the rule expressed in *United States v. Fritzsche Bros., Inc.*, 35 CCPA (customs) 60, C.A.D. 371 (1947), a party to a reappraisement proceeding may challenge one or more of the elements entering into an appraisal, while relying upon the presumption of correctness of the appraiser's return as to all other elements, whenever the challenged items do not disturb the effect of the remainder of the appraisal. Such is the case in the instance of an appraisal at ex-factory-plus-charges value, and the charges may be disputed without the necessity of proof that the ex-factory prices comply with the statutory definition of export value. *United States v. Dan Brechner et al., supra.*

The separability rule is a salutary one. In *United States v. Bud Berman Sportwear, Inc.*, 55 CCPA 28, C.A.D. 929 (1967), we described it as a "framework of convenience for the analysis of disputed appraisements." While clearly productive of procedural convenience, the rule is also rooted in fairness. In every case of disputed appraisal the importer confronts, and the government enjoys, a presumption of correctness attaching to the appraiser's valuation and all items therein. Sec. 501, Tariff Act of 1930, 28 USC 2653. When the appraisal is separable and the importer challenges less than all of its separate items, it would not only be wasteful of judicial time to require the importer to prove the correctness of presumptively correct and unchallenged items, it would be unfair and incongruous. Absent the separability rule, the courts, the government, and importers would all undergo an anomalous process in which plaintiff would undertake to prove the correctness of unchallenged actions of defendant, while defendant, presumably, would abandon the presumption of correctness and attempt to prove its own unchallenged actions incorrect. To require an importer facing a separable appraisal to "challenge all or challenge nothing" seems manifestly unfair, not only to the importer, but also to the courts and to the society, which must be taxed to pay for a portion of every litigious process in which the government participates. In this sense, the separability rule, like the doctrine of collateral estoppel and other procedural rules, is grounded in public policy. Collateral estoppel reduces the number of lawsuits. Separability reduces the length and complexity of reappraisement cases.

The court further commented with respect to its decision in *Pan American, supra*:

* * * Appellant reads too much into our opinion in *Pan American*. We held in that case that an importer challenging only the addition of inland charges could rely on the presumption of correctness of the ex-factory *price* as the export value, thus recognizing the continuing viability of the separability rule. We did not hold, as argued by appellant, that the importer was required to prove "that *all* elements of export value have been met."

* * * * *

Our opinion in *Pan American* must be read in the light of the fact situation there present. Plaintiff had elected to challenge the correctness of the addition of inland charges. The *bona fides* of inland charges as such depends on whether such or similar merchandise is freely sold or offered to all at ex-factory prices. Part of plaintiff's burden on that issue, therefore, was to prove that such or similar merchandise was freely sold or offered to all on an ex-factory basis. [Emphasis quoted.]

Additionally it is to be observed the separable charges involved are not inland charges but a royalty fee which is quite different. Where a separable appraisement exists plaintiff may rely upon the appraised unit value and contest the separable charge.

A royalty fee may or may not be part of the dutiable value. When a royalty is paid on each and every importation and is inextricably intertwined with the imported merchandise such fee is part of the dutiable value. *BBR Prestressed Tanks, Inc., Frank P. Dow Co., Inc., of L.A. v. United States*, 64 Cust. Ct. 787, A.R.D. 265 (1970); *Erb & Gray Scientific, Inc. v. United States*, 53 CCPA 46, C.A.D. 875 (1966). When the fee is not inextricably intertwined with the production of the imported merchandise or is optional or is paid for the exclusive right to manufacture and sell in a designated area it is not dutiable. *United States v. Rohner Gehrig & Co., Inc.*, 9 Cust. Ct. 591, R.D. 5724 (1942).

In the instant case attached to the motion for summary judgment are the original contract and its subsequent modification. So far as is pertinent the contract provided for the purchase of all brush heads for use in the manufacture of the Miracle Brush from Nippon Seal Co., Ltd. The purchaser paid 11 cents per unit to Takashimaya Co., Ltd., the export agent of Nippon. Plaintiff was obligated to purchase a minimum of 2,200,000 brush heads per year and a maximum of up to 3,000,000. A royalty of 7 cents for one-third of the total brush heads purchased was to be paid to Nippon within 60 days after date of the bill of lading. It also appears the same brush head used in manufacturing the Miracle Brush which utilized a patented handle was used in the manufacture of the Mini Miracle Brush using a non-patented handle.

It is urged the royalty fee was for the exclusive right to manufacture and sell in the United States the brush with the patented handle. The one-third basis of the fee was arrived at by virtue of the fact that one-third of the heads were manufactured with the patented handle.

The parties are in agreement that no royalty was paid on the instant importation. However since the evidence establishes the payment of royalties on approximately one-third of the brush heads

imported, it is incumbent on the court to determine whether or not such a fee is dutiable.

As indicated, *supra*, the imported brush heads manufactured by Nippon Seal Co., Ltd. were purchased by plaintiff for manufacture of two types of brushes. One brush utilizes a patented rotating handle known as the Miracle Brush. The patent is owned by Nippon Seal Co., Ltd. The other brush utilizes a fixed handle which is not patented and is known as the Mini Miracle Brush. The license and right to manufacture and sell the Miracle Brush on an exclusive basis is set forth in the contract between the parties and its modification.

Defendant relies upon *BBR Prestressed Tanks, Inc., supra*, and *Erb & Gray* cited therein. In *BBR* an importer of machinery was compelled to pay a royalty fee on each machine imported, the fee to benefit the manufacturer. It was contended therein that the money paid was a license fee and as such not dutiable. The court found for the defendant stating that a sum which is contractually required in which the importer has no option in connection with such an importation and which is intimately related to the use of the importation must be included in the price of merchandise under export value. The court further stated when a so-called royalty fee is paid for each machine and such compulsory payment is made to the seller and not the patent holder, the identity of the fee to the price is stronger than its relationship to the exclusive territory within which the purchaser may utilize the *BBR* method of constructing prestressed tanks.

BBR is distinguishable from the case at bar since the royalties are payable on only approximately one-third of the total importations. The payment of the fee to the seller and not the holder of the patent in both *BBR* and the instant case while similar is distinguishable. In this case Nippon is both the seller and the patent holder and accordingly benefits from the royalty. Therefore, the linking of the royalty is not so constituted as to be considered part of the purchase price.

In *Erb & Gray*, the court considered the importations of microscopes which were appraised at a unit value which included a "New York Office Service and Operation Fee." The Court of Customs and Patent Appeals held, based upon the substantial evidence of record, that the service fee paid by the importer on each unit was properly part of the export value. This fee was agreed upon by the importer in order to continue the operation of the New York office. The payment once agreed upon was not optional but required for each and every microscope imported and became a condition of the purchase of each instrument. The facts at bar indicative of a fee for payment of a royalty on only one-third of the heads shipped are distinguishable. Payments was not made on each and every importation as in *Erb &*

Gray. In addition, as indicated, *supra*, the payment of a royalty on one-third of the amount of brush heads was based upon their use with the patented handle. The payment is not so intimately related to the importations as to be part of the dutiable value.

In *Rohner Gehrig & Co., Inc., supra*, the importer purchased an exhaust blower from a foreign manufacturer. In addition he paid a fee to the engineer for advice and a license to use the engineer's patented system in manufacturing a machine which incorporated the blower. The engineer, Dr. Buchi, was not related to the manufacturer of the blower but utilized the manufacturer's branch office as collecting agent for his fee. The importer contended the fee was optional and, therefore, not part of the export value. The Government contended the fee was not optional and this was evidenced by the fact the manufacturer of the blower collected Dr. Buchi's fee. This contention is clearly indicated in the decision as follows:

The Government contends that the dutiable export value is the manufacturer's invoice price plus \$960.00 paid to the patentee of the aforesaid system for the *right to use* the blower, or a total of \$3,152.00. [Italics quoted.]

We are of opinion that this contention is based on a false premise. The fee collected by the seller for Dr. Buchi was for the right to use Dr. Buchi's system for the production of a Diesel engine in the United States and not for the right to use the blower manufactured by Brown, Boveri & Co., Ltd. The importation did not consist of a Diesel engine manufactured under the patent issued to Dr. Buchi. It consisted of only a blower which was purchased for use in the manufacture of the engine. It is merely a material or a part to be used in the construction of the engine. It is obvious that the Buchi system is not a part of the supercharging blower sold by Brown, Boveri & Co., Ltd. While the Buchi system requires a supercharging blower to be operative, the Brown-Boveri blower is not necessary to the system. Any supercharging blower would do if it produced the proper volume of air pressure.

Based upon the foregoing the court is of the opinion the royalty paid to Nippon is not dutiable. The royalty on the brush heads was a sum paid for a bona fide right obtained from the importer which is in addition to and separate from the purchase price of the involved merchandise. This payment was for the exclusive right to manufacture and sell Miracle Brushes in the United States. It was a valuable right granted by the manufacturer to an unrelated purchaser for a fee paid in addition to the price of the brush heads.

The importation did not consist of a complete Miracle Brush manufactured under the patent but only the brush head. It is merely a part

to be used in the construction of a complete brush. The patented rotating handle is not part of the brush head sold by Nippon. Indicative of the fact that the royalty is tied to the brush handle, which was the patented item, are the Letters Patent for United States Patent No. 3421171 and the opinion of patent counsel dated July 7, 1972 attached to the moving papers. While the patented handle requires a brush head to be operative, the Nippon Seal brush head is not necessary for that purpose. Any brush head would do. Additionally, it is not disputed that the contractual arrangements were arrived at through arms length negotiations. Under these circumstances it is the opinion of the court that the royalty is not part of the dutiable value.

Accordingly, plaintiff's motion for summary judgment is granted. Judgment will be entered accordingly.

Decisions of the United States Customs Court

Abstracts

Abstracted Protest Decisions

DEPARTMENT OF THE TREASURY, November 8, 1976.

The following abstracts of decisions of the United States Customs Court at New York are published for the information and guidance of officers of the customs and others concerned. Although the decisions are not of sufficient general interest to print in full, the summary herein given will be of assistance to customs officials in easily locating cases and tracing important facts.

VERNON D. ACREE,
Commissioner of Customs.

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED Par. or Item No. and Rate	HELD Par. or Item No. and Rate	POINT OF ENTRY AND MERCHANDISE	
						BASIS	
P76245	Ford, J. November 3, 1976	Morris Friedman & Co.	72-1-00175	Item 653.37 13% or 11%	Item 653.35 7% or 6%	Morris Friedman & Co. v. U.S. (C.D. 450), and C.A.D. 1186; C.D. 4570, and C.A.D. 1187	Philadelphia Candleholders, sticks, etc.
P76246	Ford, J. November 3, 1976	Morris Friedman & Co.	72-1-02435, etc.	Item 653.37 11%	Item 653.35 6%	Morris Friedman & Co. v. U.S. (C.D. 450), and C.A.D. 1186; C.D. 4570, and C.A.D. 1187	Philadelphia Candleholders, sticks, etc.

P76/247	Ford, J. November 3, 1976	Morris Friedman & Co. et al.	73-3-00710, etc.	Item 633.37 1½%, 13%, 11% or 9.5%	Item 653.35 8%, 7%, 6% or 5%	Morris Friedman & Co. v. U.S. (C.D. 4581, and C.A.D. 1166; C.D. 4570, and C.A.D. 1157)	Philadelphia Candleholders, candlesticks, etc.
P76/248	Ford, J. November 3, 1976	Kreis Corp.	72-5-00996	Item 633.37 1½%	Item 653.35 7%	U.S. v. Morris Friedman & Co. (C.A.D. 1156, 1157)	San Diego Candleholders, candle- sticks, etc.
P76/249	Watson, J. November 3, 1976	Sanyo Electric, Inc.	75-6-01674, etc.	Item 653.30 6.5%	Item 678.50 5%	Montgomery Ward & Co. v. U.S. (C.D. 4573)	Los Angeles Combination article con- taining a tape player and a cigarette lighter U.S. (C.D. 4573)
P76/250	Ford, J. November 4, 1976	The American Import Co. et al. [F.V. & 3-1-3- B6000]	69-21063, etc.	Item 633.37 1½% or 15%	Item 653.35 9% or 8%	U.S. v. Morris Friedman & Co. (C.A.D. 1156, 1157)	San Diego Candleholders, candle- sticks, etc.
P76/251	Ford, J. November 4, 1976	The American Import Co. et al. [F.V. & 3-1-3- B6000]	72-3-00994	Item 633.37 1½%	Item 653.35 8%	U.S. v. Morris Friedman & Co. (C.A.D. 1157)	San Diego Candlesticks, candlehold- ers, etc.
P76/252	Ford, J. November 4, 1976	Morris Friedman & Co.	68-53753, etc.	Item 633.39 1½% Item 653.39 1½%	Item 653.35 9%	U.S. v. Morris Friedman & Co. (C.A.D. 1157)	Philadelphia Candleholders, candlesticks, etc.
P76/253	Malez, J. November 4, 1976	Binder Tool & Mold, Limited	76-2-00905	Item 737.90 17.5%	Item 688.40 5.5%	Agreed statement of facts	Detroit HO or smaller scale model locomotive chassis, with self-contained electric motor
P76/254	Malez, J. November 4, 1976	Columbus McKinnon Corp.	76-6-01527	Item 890.60 9.5%	Item 664.10 5%	Agreed statement of facts	Norfolk Lifting machinery contain- ing pulleys, a braking system, and reduction gears
P76/255	Re, J. November 4, 1976	Thornton Glove Co., Inc.	73-4-00964, etc.	Item 705.85 or 705.35	Item 735.05 7.5%	Agreed statement of facts	New York Gloves or mittens

Decisions of the United States Customs Court

Abstracted Protest Decision

Appeal to United States Court of
Customs and Patent Appeals

APPEAL 77-3.—United States *v.* Hub Floral Corporation.—CHENILLE STEMS—ARTIFICIAL FLOWERS, PARTS OF—WIRE COVERED WITH TEXTILE MATERIAL—TSUS. Appeal from C.D. 4669

In this case chenille stems (12-inch lengths of flexible wire twisted around textile material in a manner which allows the textile fibers to protrude prominently, giving the articles a fuzzy caterpillar-like appearance) were assessed at 42.5 percent ad valorem under paragraph 748.21, Tariff Schedules of the United States, as parts of artificial flowers. The Customs Court held that the merchandise was properly dutiable as claimed by plaintiff-appellee at 12 or 11 percent, depending upon the date of entry, under the provision in item 642.97, as modified by T.D. 68-9, for other wire covered with textile material. Plaintiff alternatively claimed that the merchandise was dutiable at 12 or 10 percent, depending upon the date of entry, under the provision in item 642.18, as modified by T.D. 68-9, for strands of wire covered with textile material.

It is claimed that the Customs Court erred in not finding and holding that the merchandise was properly classified under item 748.21; in disregarding the presumption of correctness of the classification; in finding and holding that the imported merchandise is properly classifiable as claimed by the plaintiff under item 642.97, *supra*; and in finding and holding that the imported articles consist of wire covered with textile material.

Customs and Public Welfare
Awards to Native Sons of the
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APPENDIX 32-3.—Under Article V High Tides Combination—Charters
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